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General Assembly

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Ad Hoc Committee on Jurisdictional Immunities of States and Their Property
24-28 February 2003

Draft report

Rapporteur: Ana Carlina **Plazas** (Colombia)

I. Introduction

1. The Ad Hoc Committee on Jurisdictional Immunities of States and Their Property, established by the General Assembly in its resolution 55/150 of 12 December 2000, was reconvened in accordance with paragraph 2 of Assembly resolution 57/16 of 19 November 2002. The Ad Hoc Committee met at Headquarters from 24 to 28 February 2003.

2. In accordance with paragraph 3 of General Assembly resolution 55/150, the Ad Hoc Committee was open to all States Members of the United Nations and to States members of the specialized agencies.

3. The Chairman of the Ad Hoc Committee, Gerhard Hafner (Austria), opened the session.

4. At its 5th plenary meeting, on 24 February, the Ad Hoc Committee elected Manimuthu Gandhi (India) to replace Narinder Singh (India) and Ana Carlina Plazas (Colombia) to replace Guillermo Reyes (Colombia) on the Bureau. Thus, the Bureau was constituted as follows:

Chairman:
Gerhard Hafner (Austria)

Vice-Chairpersons:
Karim Medrek (Morocco)
Piotr Ogonowski (Poland)
Manimuthu Gandhi (India)

Rapporteur:
Ana Carlina Plazas (Colombia)

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5. The Director of the Codification Division of the Office of Legal Affairs, Václav Mikulka, acted as Secretary of the Ad Hoc Committee. The Deputy Director of the Division, Mahnoush H. Arsanjani, acted as Deputy Secretary of the Ad Hoc Committee and Secretary to the Working Group of the Whole. The Codification Division provided the substantive services for the Ad Hoc Committee and the Working Group of the Whole and its working groups.

6. Also at its 5th plenary meeting, the Ad Hoc Committee adopted the following agenda (A/AC.262/L.3):

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Organization of work.
5. Making a final attempt at consolidating areas of agreement and resolving outstanding issues, with a view to elaborating a generally acceptable instrument based on the draft articles on jurisdictional immunities of States and their property adopted by the International Law Commission at its forty-third session, and also on the discussions of the open-ended working group of the Sixth Committee and the Ad Hoc Committee and their results, as well as to recommending a form for the instrument.
6. Adoption of the report.

7. The Ad Hoc Committee had before it its report on the 2002 session[1] and, for reference purposes, comments submitted by States in accordance with General Assembly resolution 49/61 of 9 December 1994 and on the reports of the open-ended working group of the Sixth Committee established under Assembly resolutions 53/98 of 8 December 1998 and 54/101 of 9 December 1999, as contained in the reports of the Secretary-General.[2] The Committee also had, for reference purposes, the 1999 and 2000 reports of the Chairman of the working group of the Sixth Committee;[3] the draft articles on jurisdictional immunities of States and their property adopted by the International Law Commission at its forty-third session in 1991;[4] and the comments and suggestions made by the Commission at its fifty-fourth session in 1999,[5] in accordance with Assembly resolution 53/98.

II. Proceedings

8. At its 5th plenary meeting, the Ad Hoc Committee adopted its organization of work and decided to proceed with its work in a Working Group of the Whole.

9. The Working Group proceeded with the substantive discussion of the outstanding issues and established two informal consultative groups. The first group, coordinated by Chusei Yamada (Japan), dealt with the criteria for determining the commercial character of a contract or transaction under paragraph 2 of article 2. The second group, coordinated by Michael Bliss (Australia), considered outstanding issues relating to the concept of a State enterprise or other entity in relation to commercial transactions under paragraph 3 of article 10, contacts of employment under paragraph 2 of article 11, the question of non-applicability of the draft articles to criminal proceedings, and their relationship with other agreements. Pending

issues concerning articles 13, 14, 17, 18 and the form of the future instrument were considered by the Working Group of the Whole.

10. The Working Group of the Whole discussed [and resolved] all the outstanding issues.

11. At its 6th plenary meeting, on 28 February 2003, the Ad Hoc Committee adopted its report containing the text of the draft articles on jurisdictional immunities of States and their property (see annex I), together with understandings with regard to some of the provisions of the draft articles (see annex II).

12. At the same meeting, the Ad Hoc Committee decided to recommend that the General Assembly take a decision on the form of the draft articles. If and when the General Assembly decided to adopt the draft articles as a convention, the draft articles would need a preamble and final clauses, including a general saving provision concerning the relationship between the articles and other international agreements relating to the same subject.

Notes

[1] *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 22* (A/57/22).

[2] A/52/294, A/53/274 and Add.1, A/54/266, A/55/298 and A/56/292 and Add.1 and 2.

[3] A/C.6/54/L.12 and A/C.6/55/L.12.

[4] *Yearbook of the International Law Commission, 1991*, vol. II, Part Two (United Nations publication, Sales No. E.93.V.9 (Part 2)), document A/46/10, chap. II, para. 28.

[5] *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 10* and corrigenda (A/54/10 and Corr.1 and 2), annex.